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THE NEW JAPANESE CIVIL CODE.—An interesting and timely contribution to comparative jurisprudence was made by Professor Nobushige Hozumi in his paper read before the International Congress of Arts and Science at St. Louis on the new Japanese Civil Code. The writer of this paper is a member of the English bar, has studied jurisprudence at the University of Berlin and at Paris, is professor of law in the Imperial University of Tokio, and was one of the three commissioners appointed to prepare the draft of the new civil code. To American lawyers, whose ignorance of the present status of the law of Japan is as great as their general interest in Japanese commercial and military activity, such a scholarly and clear exposition of the development and present condition of Japanese law is very welcome. A few of the salient features of the new code, as described and analyzed by Professor Hozumi, may be of interest here.

In drafting the code a systematic and serious investigation was made of more than thirty civil codes, including the civil codes of New York, Louisiana, Lower Canada, the South African Republics, and numerous European codes, with the purpose of incorporating into the new code the best features to be found in all. More fully than in perhaps any other case, may the Japanese code be said to be a product of comparative jurisprudence. Originally, Japanese law belonged to what Professor Hozumi calls the "family of Chinese law." Even as late as 1870 the Japanese criminal code was modeled upon the Chinese codes of Tang, Min, and Shin Dynasty. But with the advent of the new code, in 1898, the Japanese civil law passed from the Chinese family to the Roman family of laws, with some features borrowed from the English Common Law.

"Previous to the Restoration of 1868, there was no idea that publication was essential to law." Most laws, and especially the criminal code, were kept in strict secrecy, were not even printed, and none but officials charged with enforcing them were allowed to see them. They were considered merely rules for the conduct of officials, not for the conduct of citizens. The laws controlled the officials, the officials controlled the citizens, but the citizens themselves never obtained any *direct* knowledge of the laws. The new code has swept away this archaic notion.

The new code is arranged under five heads: Book I., "General Provisions"; Book II., "Rights *in rem*"; Book III., "Rights *in personam*"; Book IV., "Family"; Book V., "Succession." This separate book devoted to the family is due to the peculiar features of the old Japanese law, many of which have remained unchanged or only slightly modified, whereby the family and not the individual formed the unit of society. We have not sufficient space to give in detail the Japanese legal notions of "House" and "Kinship," these two conceptions forming the double base upon which rests the family law. In many respects the ancient family as described by Sir Henry Maine corresponds closely with the Japanese "House." The "House" is not a household, nor a dwelling place, but a group of persons bearing the same surname and subject to the authority of the "House-head." It may include persons who are not kindred to the "House-head," because it includes the kindred of

the preceding "House-head"; and it may exclude the nearest kindred of the "House-head," who, by adoption or marriage, have entered another "House."

As to the position of women, the new code is liberal and enlightened. A *feme sole* is unrestricted in her right to acquire and dispose of property. After marriage the woman is obliged to obtain the permission of her husband in doing certain acts involving serious consequences to their conjugal life, such as contracting debts, etc.; but even here the wife is under no legal *incapacity*, for her unauthorized acts are not void, but merely voidable at her husband's option. And the harsh common law theory that the wife's property became her husband's gives place to the rule that the marriage works no change in property rights. In the matter of divorce, the new code recognizes two kinds, *consensual*, which is effected by arrangement of the parties, and *judicial*, which is granted by a court of law on the grounds specified in the code.

The status of foreigners has also been placed upon a satisfactory legal basis. Formerly they stood wholly outside the pale of the law. More recently, and until the adoption of the new code, their rights depended upon treaties, not upon the laws of the country. But now foreigners enjoy their rights under the *law*, and the limitations placed upon them, in the way of restricting their right to own land, or to work mines, or to own shares in the Bank of Japan, etc., are slight and rather formal than substantial.

Under the law of succession are recognized two kinds of succession, viz., succession to house-headship and succession to property. The former derives its importance from the continuance of the worship of ancestors, and every precaution is taken against the extinction of a house, for with its extinction the worship of its ancestors would cease. The latter presents merely the same problems that we are accustomed to, and the laws relating thereto are not strikingly different from those with which we are familiar.

The subject of Japanese law certainly offers interesting possibilities to students of historical and comparative jurisprudence, and it is to be hoped that Professor Hozumi's address will stimulate further research in this country.